

1 **WO**

NOT FOR PUBLICATION

2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 City of Kingman,

No. CV-17-08272-PCT-JJT

10 Plaintiff,

**ORDER**

11 v.

12 Kingman Airport Authority Incorporated,

13 Defendant.  
14

15 At issue is the Plaintiff City of Kingman’s (“Kingman”) Motion to Remand (Doc.  
16 6, Mot.), to which Defendant Kingman Airport Authority (“KAA”) filed a Response  
17 (Doc. 13, Resp.), and Kingman filed a Reply (Doc. 17, Reply). In this Order, the Court  
18 will also address Kingman’s “Notice of Application Requiring Immediate Attention by  
19 the Court.” (Doc. 20.) The Court finds these matters suitable for resolution without oral  
20 argument. *See* LRCiv 7.2(f).

21 **I. BACKGROUND**

22 In the Complaint (Doc. 1-6 at 2-4, Compl.) and its attachments, Kingman alleges  
23 that it has leased the Kingman Airport to KAA since 1992, and the 1992 Lease  
24 Agreement together with Amendments made in 2003 and 2007 (collectively, “Lease”)  
25 have a term that expires in 2028. The Lease sets forth the conditions under which  
26 Kingman can terminate it, including a failure by KAA “to perform, keep and observe any  
27 and all” of the Lease terms, providing Kingman gives notice of any default or breach and  
28 a 90-day opportunity to cure to KAA. (Doc. 1-1, Lease ¶ 20.) The Lease also provides for

1 the compensation to be paid in the event the Airport is “condemned, taken or acquired by  
2 a body having superior power of eminent domain.” (Lease ¶ 17.)

3 Kingman became dissatisfied with KAA’s operation of the Airport and, on  
4 November 7, 2017, the City Council passed Resolution 5113, declaring that KAA was  
5 failing to perform under the Lease, mismanaging the Airport, “committing waste,” and  
6 devaluing the City’s assets. (Doc. 1-8 at 169, Resolution 5113.) Resolution 5113 thus  
7 authorized Kingman to acquire the Airport pursuant to the provisions of A.R.S. § 12-  
8 1111, *et seq.*—Arizona’s condemnation statutes. On November 14, 2017, the City sent a  
9 letter to KAA offering to acquire the Lease and KAA’s assets for zero dollars plus  
10 assumption of KAA’s obligations and giving KAA 20 days in which to respond, under  
11 threat of a condemnation action. (Doc. 1-2.)

12 On December 1, 2017, KAA filed a Complaint in this Court—designated Case No.  
13 CV-17-08260-PCT-JJT—alleging that, as a result of Resolution 5113 authorizing  
14 Kingman’s condemnation of KAA’s leasehold, KAA may not seek damages for what  
15 otherwise would be Kingman’s breach of the Lease through its failure to give KAA  
16 notice of any default or breach and a 90-day opportunity to cure, and through its  
17 termination of the Lease in the absence of any other required conditions. KAA also  
18 contended that Arizona law does not support Kingman’s position that it is “a body having  
19 superior power of eminent domain” allowing it to condemn the leasehold and triggering  
20 the compensation terms of paragraph 17 of the Lease. Furthermore, KAA alleged that  
21 Kingman violated Arizona’s condemnation statute, A.R.S. § 12-1112, because the land  
22 was already appropriated to some public use and the public use to which it is to be  
23 applied is not a more necessary public use. Based on these allegations, KAA raised two  
24 claims against Kingman: (1) a claim under 42 U.S.C. § 1983 for violation of Article 1,  
25 Section 10, Clause 1 of the United States Constitution (the “Contracts Clause”); and (2) a  
26 claim under Article II, Section 25 of the Arizona Constitution (the “State Contracts  
27 Clause”). KAA sought preliminary and permanent injunctive relief precluding Kingman  
28

1 from enforcing Resolution 5113 or otherwise condemning KAA's leasehold interest in  
2 the Kingman Airport and an award of attorney's fees.

3 On December 5, 2017, Kingman filed the present case: a Complaint in Eminent  
4 Domain in Mohave County Superior Court seeking to condemn KAA's leasehold interest  
5 under Arizona's eminent domain laws. (Compl. at 1-2.) KAA removed the case to this  
6 Court, contending that its Contracts Clause claim against Kingman's condemnation  
7 action gives the Court federal question jurisdiction. (Doc. 1, Notice of Removal at 1-2.)  
8 Kingman has moved to remand this case to state court. (Doc. 6.) Kingman has also filed a  
9 "Notice of Application Requiring Immediate Attention by the Court," requesting that this  
10 Court immediately address Kingman's underlying application for immediate possession  
11 of the KAA leasehold. (Doc. 20.)

12 The Court has now dismissed KAA's earlier-filed action against Kingman for lack  
13 of subject matter jurisdiction (Case No. CV-17-08260-PCT-JJT) and will now resolve  
14 Kingman's Motion to Remand (Doc. 6) and "Notice of Application Requiring Immediate  
15 Attention by the Court" (Doc. 20) filed in this action.

## 16 **II. LEGAL STANDARD**

17 Federal courts may exercise removal jurisdiction over a case only if subject matter  
18 jurisdiction exists. 28 U.S.C. § 1441(a); *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1116  
19 (9th Cir. 2004). The removing party is required to provide a signed notice of removal that  
20 contains a short and plain statement of the grounds for removal. 28 U.S.C. § 1446(a). The  
21 removing party carries the burden of establishing subject matter jurisdiction, and "[a]ll  
22 doubts about federal jurisdiction should be resolved in favor of remand to state court." *In*  
23 *re Prempro Prod. Liab. Litig.*, 591 F.3d 613, 620 (8th Cir. 2010); *see* 28 U.S.C.  
24 § 1447(c). A plaintiff may seek to have a case remanded to the state court from which it  
25 was removed if the district court lacks jurisdiction or if there is a defect in the removal  
26 procedure. 28 U.S.C. § 1447(c). The district court must remand the case if it appears  
27 before final judgment that the court lacks subject matter jurisdiction. *Id.*

1     **III.     ANALYSIS**

2             **A.     Motion to Remand**

3             KAA contends that this Court has subject matter jurisdiction over Kingman’s state  
4     court condemnation action because that action necessarily includes a determination  
5     whether Resolution 5113 and Kingman’s associated actions to condemn KAA’s leasehold  
6     interest contravene the Contracts Clause of the United States Constitution, a federal  
7     question providing the Court with jurisdiction.<sup>1 2</sup> (Notice of Removal at 1-2; Resp. at 4.)  
8     Presuming that, under *Gunn v. Minton*, 568 U.S. 251, 258 (2013), KAA’s Contracts  
9     Clause claim is necessarily implicated in Kingman’s state court condemnation action, the  
10    Court must conclude that KAA cannot state a Contracts Clause claim in this circumstance  
11    under the operative case law.

12            The Contracts Clause provides, “No State shall . . . pass any . . . Law impairing the  
13    Obligation of Contracts.” U.S. Const. art. I, § 10, cl. 1. On a number of occasions, the  
14    Supreme Court has taken to laying out the scope of protection the Contracts Clause  
15    provides. In *West River Bridge Co. v. Dix*, 47 U.S. 507 (1848), on which Kingman relies  
16    in opposing KAA’s assertion of federal question jurisdiction (Reply at 2-3), the State of  
17    Vermont granted a charter to a private corporation to operate a toll bridge across a river.  
18    47 U.S. at 530. Some years later, Vermont exercised its eminent domain authority to  
19    extinguish the corporation’s franchise, assess just compensation, and convert the bridge  
20    to a free public highway. *Id.* at 531. In evaluating the corporation’s Contracts Clause  
21    claim against Vermont, the Supreme Court concluded that the Constitution did not  
22    prevent Vermont from exercising its power of eminent domain, even if the property taken  
23    from the corporation was previously conveyed by Vermont to the corporation. *Id.* at

---

25            <sup>1</sup> The Court addressed the same question in KAA’s earlier-filed lawsuit, Case No.  
26    CV-17-08260-PCT-JJT, but, in the interest of completeness, the Court will repeat its  
analysis in large part here.

27            <sup>2</sup> In its Response, KAA also argues that only the Federal Aviation Administration  
28    determines who may operate an airport, which also gives this Court federal question  
jurisdiction. However, KAA did not allege this as a jurisdictional basis in its Notice of  
Removal.

1 532-33. The resulting doctrine, labelled the reserved powers doctrine, describes the  
2 proposition that a state “may not enter a contract that ‘surrenders an essential attribute of  
3 its sovereignty,’” including its power of eminent domain. *Matsuda v. City & Cty. of*  
4 *Honolulu*, 512 F.3d 1148, 1153 (9th Cir. 2008) (quoting *U.S. Trust Co. v. New Jersey*,  
5 431 U.S. 1, 23 (1977)). Such a contract is void *ab initio* and, as a consequence, “the  
6 Contracts Clause may not be used to compel a state to adhere” to the contract. *Id.* at  
7 1152-53. “As the Court explained, all contracts, whether they are between a state and a  
8 private actor or [between] private actors alone, are made subject to the understanding that  
9 the state may one day take the subject property for public use, provided that just  
10 compensation is paid.” *Id.* at 1153. Kingman argues that this holding is dispositive of  
11 KAA’s Contracts Clause claim.

12 KAA argues that an important distinction exists between *West River Bridge* and  
13 this case: here, the contract is between two state actors whose eminent domain powers are  
14 set forth in Arizona statutes. (*See Resp.* at 4.) As a result, the Lease was not a surrender  
15 of eminent domain power and the reserved powers doctrine does not apply. KAA thus  
16 contends that the heightened scrutiny test announced by the Supreme Court in *U.S. Trust*,  
17 431 U.S. at 20-21, applies to determine whether a state (or local) law violates the  
18 Contracts Clause, namely, “(1) whether the state [or local] law has, in fact, operated as a  
19 substantial impairment of the contractual relationship; (2) whether the state [or local] law  
20 is justified by a significant and legitimate public purpose; and (3) whether the impairment  
21 resulting from the law was both reasonable and necessary to fulfill such public purpose.”  
22 *Matsuda*, 512 F.3d at 1152 (internal quotations and citations omitted).

23 Essential to the application of the reserved powers doctrine is a showing that the  
24 contract in question—the Lease—prevents the state actor’s exercise of the power of  
25 eminent domain, such that the state actor did not have the capacity to enter into the  
26 contract to begin with. *Matsuda*, 512 F.3d at 1154. The question before the Court is  
27 whether one state actor surrenders its eminent domain power by entering into a Lease  
28 with another state actor, where the state’s statutes define the actors’ eminent domain

1 powers and the Lease itself provides the terms of compensation when a state actor  
2 “having superior power of eminent domain” condemns the leasehold interest (Lease  
3 ¶ 17). Each party to the Lease, as a state actor, has the sovereign power the *West River*  
4 *Bridge* Court was concerned about, that is, the “right and the duty of guarding its own  
5 existence, and of protecting and promoting the interests and welfare of the community at  
6 large.” 47 U.S. at 531. The Supreme Court’s conclusion that “all *private* rights . . . are . . .  
7 held in subordination to . . . and must yield in every instance” to a state’s eminent domain  
8 power, *id.* at 532 (emphasis added), is not implicated in this case where private rights are  
9 not at issue. Put another way, the question is this: Does a state relinquish its “power of  
10 self-government and self-preservation,” *id.*, when one of its subdivisions leases property  
11 to another?

12 The parties do not cite a case resolved by the reserved powers doctrine in which  
13 the underlying contract was entered into between two state actors, nor has the Court  
14 uncovered one. *But see Municipality of Anchorage v. Alaska*, 393 F. Supp. 2d 958 (D.  
15 Alaska 2005) (recognizing the application of the Contracts Clause to contracts entered  
16 into between two state actors but analyzing the state’s actions not under the reserved  
17 powers doctrine but instead under the three-part heightened scrutiny test of *U.S. Trust*). In  
18 the more straightforward circumstance presented in *West River Bridge*, the state entered  
19 into a contract to give a private corporation the exclusive right to erect a bridge and take  
20 tolls, and the Supreme Court found the contract to be void as a surrender of the state’s  
21 eminent domain power. The Ninth Circuit has subsequently applied the reserved powers  
22 doctrine in its review of the constitutionality of a state subdivision’s contract with a  
23 private party and subsequent act to modify the contract. *E.g., Matsuda*, 512 F.3d at 1152-  
24 54.

25 Here, the Lease is a contract between two state actors that contemplates  
26 condemnation by referring the parties to state law for a determination of which party has  
27 the superior power of eminent domain and what compensation should be paid in the event  
28 of condemnation. It is possible to interpret the Lease as a bargained-for procedure by

1 which condemnation is to take place, more than a surrender of state eminent domain  
2 power. But KAA seeks to invoke the Contracts Clause to stop Kingman from  
3 condemning KAA's leasehold interest *in any manner*, whether through Resolution 5113  
4 or otherwise. Thus, regardless of the fact that both parties to the Lease are state actors  
5 here, *West River Bridge* and its progeny operate to provide that the Contracts Clause  
6 cannot be used to enforce a contract that prevents a state actor from exercising its  
7 eminent domain power. While the Court understands KAA's concerns, in the absence of  
8 further or contrary authority, the Court will apply the reserved powers doctrine and find  
9 that Kingman's condemnation of KAA's leasehold does not contravene the Contracts  
10 Clause.

11 Because KAA cannot state a claim against Kingman under the Contracts Clause or  
12 another provision of the United States Constitution, and that federal question was the  
13 basis for the Court's subject matter jurisdiction asserted by KAA in its Notice of  
14 Removal, the Court must remand this action. *See Herman Family Revocable Trust v.*  
15 *Teddy Bear*, 254 F.3d 802, 805 (9th Cir. 2001) (concluding that, "[w]ithout the hook of  
16 [federal question] jurisdiction—the basis for original jurisdiction—the district court has  
17 no power under either 28 U.S.C. § 1367 or Article III of the Constitution to adjudicate  
18 any claims in the lawsuit" and should remand the case to state court). KAA may still raise  
19 its defenses to condemnation under Arizona law in state court, including that Kingman  
20 does not have superior eminent domain power over KAA and that the public use  
21 associated with Kingman's operation of the airport is not more necessary than the public  
22 use associated with KAA's operation of the airport. *See* A.R.S. § 12-1112.

23 Kingman requests that the Court "enter a show-cause order re Rule 11 sanctions in  
24 this case *sua sponte*" for sanctions against counsel for KAA. (Mot. at 5.) Federal Rule of  
25 Civil Procedure 11 provides that a person who signs a pleading "certifies that to the best  
26 of the person's knowledge, information, and belief, formed after an inquiry reasonable  
27 under the circumstances . . . the claims, defenses, and other legal contentions are  
28 warranted by existing law or by a nonfrivolous argument for extending, modifying, or

1 reversing existing law or for establishing new law.” Rule 11 also provides that a court  
2 may impose an appropriate sanction against an attorney who violates the Rule. In  
3 examining a pleading under Rule 11, the court must determine “(1) whether the  
4 [pleading] is legally or factually baseless from an objective perspective, and (2) if the  
5 attorney has conducted a reasonable and competent inquiry before signing and filing it.”  
6 *Holgate v. Baldwin*, 425 F.3d 671, 676 (9th Cir. 2005) (internal quotation omitted). “As a  
7 shorthand for this test, [courts] use the word ‘frivolous’ to denote a filing that is *both*  
8 baseless *and* made without a reasonable and competent inquiry.” *Id.* (internal quotation  
9 omitted).

10 Kingman implies that KAA’s Notice of Removal is frivolous for the same reasons  
11 it sought remand of this action. The Court does not find that KAA’s removal of this  
12 lawsuit even begins to rise to the level of frivolousness warranting the entry of Rule 11  
13 sanctions—nor did Kingman cite a single case to try to convince the Court otherwise.  
14 Indeed, KAA’s positions in asserting federal jurisdiction, while they did not prevail here,  
15 were at least colorable, and its counsel’s briefing was candid, credible and considerably  
16 more helpful to this Court in resolving the issues before it than those of Kingman’s  
17 counsel. If the Court had concern about any party’s briefing to the Court, it was that of  
18 Kingman, which the Court found to have overlooked or avoided germane issues in  
19 several instances.

20 **B. “Notice of Application Requiring Immediate Attention by the Court”**

21 Although Kingman’s Motion to Remand required the Court to determine if it has  
22 subject matter jurisdiction over this matter, days after it was fully briefed and while it was  
23 still pending, Kingman filed a “Notice of Application Requiring Immediate Attention by  
24 the Court,” requesting that the Court immediately address Kingman’s underlying  
25 application for immediate possession of the KAA leasehold. (Doc. 20.) It might usually  
26 go without saying, but the Court would not proceed with a substantive hearing in an  
27 action if it has not yet determined its subject matter jurisdiction over the action—a  
28 subject Kingman itself put before the Court.



1           Moreover, in the Notice, not only does Kingman’s counsel take a tone of  
2 aggressiveness bordering on arrogance in trying to tell the Court how to do its job; he  
3 does so by ignoring and distorting the controlling law. Counsel states that “an application  
4 for immediate possession must be given precedence over other civil cases under  
5 Arizona’s condemnation statute [and] the law governing this case.” (Doc. 20 at 1.) In  
6 support of this proposition, counsel cites A.R.S. § 12-1121(B), which provides that a  
7 court hearing a condemnation action “shall, at the request of any party, give the action  
8 precedence over other civil actions.” But the prioritization of condemnation cases over all  
9 others that Arizona state law provides for in § 12-1121(B) is undeniably a procedural  
10 law, not a substantive law, and counsel states no authority to rebut the general proposition  
11 that federal courts entertaining federal Constitutional questions will apply federal  
12 procedural law. *See, e.g.*, Fed R. Civ. P. 81(c)(1). There is no federal procedural law  
13 giving priority of any sort to a state condemnation case.

14           Moreover, in support of his statement that “the law governing this case” requires  
15 immediate hearing of the instant action, counsel also cites Rule 71.1(k) of the Federal  
16 Rules of Civil Procedure, which provides that where a federal court hears a condemnation  
17 matter under state law, “if state law provides for trying an issue by jury—or for trying the  
18 issue of compensation by jury or commission or both—that law governs.” The provision  
19 counsel cites has nothing to do with prioritization or precedence of the action. It is  
20 expressly limited to whether a jury will hear the matter. The entire Notice and all of the  
21 legal citation upon which counsel rests his argument is most charitably characterized as  
22 sloppy at best, and potentially something much worse. The Court is entitled to rely on  
23 accurate and candid citations of law and rules by all counsel; it expects the same now and  
24 in the future, as should any court.

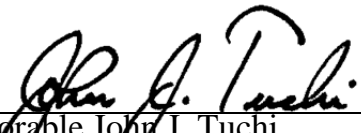
25           IT IS THEREFORE ORDERED granting in part Plaintiff City of Kingman’s  
26 Motion to Remand (Doc. 6). This case is to be remanded to state court, but Plaintiff’s  
27 request for a show cause hearing related to Rule 11 sanctions is denied.  
28

1 IT IS FURTHER ORDERED denying all other pending motions in this action as  
2 moot.

3 IT IS FURTHER ORDERED vacating the Rule 16 Scheduling Conference  
4 scheduling before District Judge Rayes at 4:30 p.m. on March 7, 2018.

5 IT IS FURTHER ORDERED directing the Clerk of Court to remand this action to  
6 Mohave County Superior Court as soon as is practicable.

7 Dated this 16th day of January, 2018.

8  
9   
10 \_\_\_\_\_  
11 Honorable John J. Tuchi  
12 United States District Judge  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28